

Eastern Washington Municipal Stormwater Public Hearing

April 25, 2006

Moderator:

Let the record show that it is 1:33 p.m. on April 25, 2006. This public hearing is being held at the Hal Holmes Community Center located at 209 North Ruby Street, Ellensburg, WA.

The primary purpose of this hearing is to receive public comments regarding the Phase II Eastern Washington Municipal Stormwater Permit. The legal notice this hearing was published in the Washington State Register, issue number 06-04-096 on February 15, 2006. On February 15, 2006 an email announcing the public hearing was sent to approximately 573 potential permit holders and other interested parties using the Ecology Stormwater Listserve for Eastern Washington, in addition information about this hearing was directly mailed to one other interested party. The Department of Ecology also mailed out a press release statewide on February 15 to media outlets informing them of the public hearing. At this time we have one person who has indicated he would like to provide testimony, and sir if you would give your name and your address, go ahead and speak into the recorder when you are ready.

Barnett:

My name is Clarence Barnett. I'm here representing the Central Washington Homebuilders Association which is located on West Nob Hill Boulevard in Yakima, WA. My remarks today probably result more from a rereading of the permit and perhaps becoming confused in rereading different sections. So therefore, I want to make my comments hoping that it may only require a clarification rather than a drastic, recommending a drastic change in the permit. As a general statement I want to say that I read some of the requirements of the MS4 Stormwater Permit as undermining the intent of the Erosivity Waiver. Compliance with the requirements for Erosivity Waiver certification is of course to obtain, quote, an exclusion from NPDES Stormwater Permitting, unquote. However the manner in which the MS4 Stormwater Permit is written the Erosivity Waiver at the local level only exempts the applicant from site plan and stormwater pollution prevention plan review.

I cite Core Element number 2, page 3 starting at line 31 which reads, in part, "Local jurisdictions may choose to allow site operators to apply an Erosivity Waiver to projects such projects would be waived from the requirements that the jurisdiction review the site plans emphasizing review site plans." Core Element number 2, page 8, line 8 states, "The local jurisdiction may allow construction site operators to qualify for a waiver from the requirement to submit a stormwater pollution prevention plan for local jurisdiction review." These provisions as I read them in the MS4 Permit clearly indicate that the preparation of a stormwater site plan and stormwater pollution prevention plan must still be prepared. Even with compliance of the Erosivity Waiver certification. The words, review, and the words cement as used in the permit imply that the site plan and the stormwater pollution prevention plan must be prepared but it's just not necessary to present them to the local jurisdiction for review. This then negates the purpose and intent of the Erosivity Waiver which is to obtain an exclusion from NPDES permitting requirements. Requirements for the Erosivity Waiver should in our opinion be the same in both the construction and the MS4 stormwater permits.

Continuing and relating to the Erosivity Waiver, the Central Washington Homebuilders Association believes that the provisions of S5.B.4 at page 15 starting at line 20. That requires escalating enforcement sanctions for construction sites that failed to meet the time line restrictions of the Erosivity Waiver should be revised. Construction is frequently and often unavoidable and there are delays by unforeseen circumstances such as delays in shipment of the good in order to construct. The stormwater permit for

construction the construction stormwater general permit I believe is fair. It provides that if the construction activity extends beyond the certified waiver period for any reason the operator has two options: he can recalculate the rainfall erosivity factor and if he still can comply he can continue; or he can submit a complete permit application to Ecology in accordance with the provisions of the construction permit before the end of the certified waiver period. Here again, I feel that the requirements of the MS4 permit and the stormwater construction permit should be the same. In other words, I believe that the MS4 permit does not allow these options as found in the construction permit and immediately goes into sanctions and that is the part that I have concern with.

Changing now to the permit at S5.B.4.b.i, page 15, starting at line 35 reads, in part, "Prior to construction, permittees shall review Construction Stormwater Pollution Prevention Plans to ensure that the plans are complete pursuant to the requirements of Appendix 1, Core Element number 2." I read this provision as contrary to the construction stormwater general permit wherein the stormwater pollution prevention plan need not be completed until the time of land disturbance or construction activity. It is also contrary to the fact sheet, page 14 under construction stormwater general permit which reads, quote, construction site operators that are covered under an operating and compliance with construction stormwater general permit would be in compliance with the requirement of this permit," and later in the fact sheet at page 33, first paragraph Ecology states its intent to make the requirements for developers the same for both the MS4 permit and the construction stormwater general permit except for local review of stormwater pollution prevention plans. Again this is contrary to the language in the construction stormwater general permit.

The MS4 stormwater general permit should not have language that is contrary to the construction general permit. And of course early review of the stormwater prevention pollution plan and the site plan will cause additional delay for construction projects and it also undermines in our opinion the flexible nature and purpose of the general permit process and at this time I would like refer to the governor executive order 0602 which I believe was issued, I'm not sure the date it was issued, probably around February. Which directs state agencies to reduce regulatory burdens and we read this, what I've just said that it's not reducing the burden it's complicating in trying to interpret the differences in the regulations.

Turning now to the formal public comment draft phase 2 permit, in several locations you will find sentences that end with phrases, and I will read the phrases, such as, quote, "to the extent allowable under local and state law," unquote or, quote, "to ensure compliance to the extent allowable under state law," unquote, or quote, "to the extent allowable under Federal and state law," unquote. These phrases are vague and in our opinion will require legal research to guarantee compliance. Not providing the parameters of these phrases unnecessarily burdens local governments and of course leaves developers somewhat in the dark. And these phrases, in our opinion, should be either deleted or Ecology should provide the statutory or judicial references to these types of phrases.

In our submission I will cite the specific pages and examples so that you – that I have reference to. I have other comments I will conclude with in an area that involves vesting. I'm not an attorney so I'm not qualified to specifically discuss whether or not the stormwater permit is in violation of vesting laws. Let me say what I wrote and hopefully it will make some sense.

I refer to S5.B.5, page 17, lines 19 -22 which read in part, "For new development and redevelopment projects that are vested before the effective date of this permit, permittees must require post-construction stormwater controls to the extent allowable under local and state law," unquote. The phrase "to the extent allowable under local and state and law" is vague and will require extensive legal research to

determine compliance. Laws regarding vesting prohibit state and local governments from applying new rules adopted after a completed application is filed.

The homebuilders feel or submit that the sentence or a sentence should be in the permit that reads along these lines: Permittees cannot require post construction stormwater controls on projects that are vested before the effective date of this permit.

I will conclude my remarks at this time in a public testimony and will submit the rest of my remarks in written form. Thank you very much.

Moderator:

Ok, anyone else who would like to say anything on the record? Ok.

All the testimony presented at this hearing as well as any of the written comments received are part of the official record for this proposal and everything receives equal weight in the decision making process. The public comment period ends on May 19, 2006. Written comments must be received by 5 o'clock p.m. on May 19. Please submit your written comments to the Municipal Stormwater Eastern Washington Permit, Water Quality Program, Department of Ecology, P.O. Box 47696, Olympia, WA 98504-7696. You may also submit comments by email and the email address is: EasternComments@ecy.wa.gov. Comments may also be sent via the fax. The fax number is 360-407-6426.

All oral and written comments received during the public comment period will be responded to in a document called the Response To Comments Summary that will state Ecology's official position on the issues and the concerns that have been raised. That document will automatically be mailed out to everyone who provided oral or written testimony and as I said earlier it will be posted on the webpage when it is completed. Ecology is expected to issue this permit by the end of September, 2006. If Ecology believes comments received either in writing or in oral testimony could substantially change the scope or the conditions within the original draft permit, another public notice of draft and comment period may be necessary which could result in a delay in issuing the permit coverage. The ultimate decision to issue the permit will be made by the Water Quality Program Manager, Dave Peeler.

On behalf of the Department of Ecology, thank you for coming and this hearing is adjourned at 1:47, thank you.